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The Honorable Frederick P. Corbit
Chapter: 9
Hearing Date and Time: May 15, 2018 at 1:30 p.m.
Objection Deadline: Due at Hearing

9 UNITED STATES BANKRUPTCY COURT
10 EASTERN DISTRICT OF WASHINGTON

11 In Re:

Case No. 17-02025-9

12 Kennewick Public Hospital District,
13 Debtor.

DEBTOR'S MOTION FOR ENTRY
OF AN ORDER APPROVING A
SETTLEMENT AND PLAN
SUPPORT AGREEMENT WITH
GROUP ONE EQUIPMENT
LESSORS

15 Kennewick Public Hospital District, a Washington public hospital district
16 (d/b/a Trios Health) (the "District" or the "Debtor") and the debtor in the above-
17 captioned case (the "Chapter 9 Case") files this motion (the "Motion") for entry of
18 an order, pursuant to section 105(a) of title 11 of the United States Code, 11 U.S.C.
19 §§ 101-1532 (as amended, the "Bankruptcy Code") and rule 9019 of the Federal
20 Rules of Bankruptcy Procedure (as amended, the "Bankruptcy Rules"), approving
21 a settlement and plan support agreement (the "Agreement") entered into by and
22 between Philips Medical Capital LLC ("Philips"), Key Government Finance, Inc.

MOTION FOR ENTRY OF AN ORDER APPROVING A
SETTLEMENT AND PLAN SUPPORT AGREEMENT
WITH GROUP ONE EQUIPMENT LESSORS - 1

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1 (“Key”), EverBank Commercial Finance, Inc. (“EverBank”), and Hitachi Capital
2 America Corp. (“Hitachi”, and together with Philips, Key, and EverBank, the
3 “Group One Equipment Lessors”) and the District (together with the Group One
4 Equipment Lessors, the “Parties”). In support of this Motion, the District
5 respectfully states as follows:

6 I. RELIEF REQUESTED

7 By this Motion, the District respectfully requests the entry of an order,
8 substantially in the proposed form attached hereto as Exhibit A (the “Proposed
9 Order”), (a) approving the Agreement pursuant to section 105(a) of the Bankruptcy
10 Code and Bankruptcy Rule 9019 and (b) granting related relief. A copy of the
11 signed Agreement is attached to this Motion as Exhibit B.

12 II. JURISDICTION

13 This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and
14 1334. This matter is a core proceeding within the meaning of 28 U.S.C.
15 § 157(b)(2). Venue in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

16 III. BACKGROUND

17 A. Lease Agreements with the Group One Equipment Lessors.

18 The District’s lease agreements with the Group One Equipment Lessors have
19 been discussed in prior pleadings filed in this Chapter 9 Case. *See, e.g.*, ECF No.
20 165 at 2:15–3:2 (discussing Philips lease agreements); ECF No. 255 at 4:15–5:3
21 (discussing Key lease agreements); ECF 522 at 4:19–6:3 (discussing Hitachi lease
22 agreements); ECF No. 523 at 4:5–5:7 (discussing EverBank lease agreements). For

the sake of brevity and avoiding duplicative briefing, the District does not restate this factual background in the Motion.

B. Litigation with Group One Equipment Lessors During the Chapter 9 Case.

Since August 2017, the District has litigated extensively with the Group One Equipment Lessors regarding the Group One Equipment Lessors' requests for orders (a) compelling the District to make adequate protection payments during the pendency of the Chapter 9 Case; and (b) granting relief from the automatic stay for failure to make such adequate protection payments. *See, e.g.,* ECF No. 151 (*Philips' Motion for Order Granting Relief from the Automatic Stay if the Debtor Does Not Provide Adequate Protection*); ECF 203 (*Key's Motion for Order Setting Deadline for Debtor to Assume or Reject Equipment Leases*); ECF No. 333 (*Hitachi's Motion for Order Providing Adequate Protection Payments on Equipment Leases*); ECF No. 440 (*EverBank's Motion for Order Providing Adequate Protection Payments on Equipment Leases or for Relief from Automatic Stay*).¹

In response to the requests for relief discussed above, this Court issued scheduling orders in favor of each of the Group One Equipment Lessors, in which

¹ Philips also initiated an adversary proceeding against the District for related causes of action. *See generally Philips Med. Capital LLC v. Kennewick Pub. Hosp. Dist.*, Case No. 17-02025-FPC, Adv. No. 18-80007- FPC (Bankr. E.D. Wash.) (the "Philips Adversary Proceeding").

1 the Court directed the District to make adequate protection payments to the
2 respective Group One Equipment Lessor and provided a process for obtaining
3 relief from the automatic stay if such adequate protection payments were made.
4 *See* ECF Nos. 318–19; ECF Nos. 568–69. The District did not make any of the
5 adequate protection payments ordered.

6 Philips and Key filed the necessary pleadings to obtain relief from the
7 automatic stay and were granted such relief. *See* ECF Nos. 426–28; ECF Nos.
8 437–39; ECF No. 469; ECF No. 478. EverBank and Hitachi did not file the
9 necessary pleadings to obtain relief from the automatic stay and, consequently,
10 have not been granted such relief. However, under the terms of the Court’s
11 scheduling orders, EverBank and Hitachi may file the necessary pleadings at any
12 time and would likely be granted relief from the automatic stay soon thereafter. *See*
13 ECF Nos. 568–69.

14 The District appealed the orders granting Philips and Key relief from the
15 automatic stay to the Ninth Circuit Bankruptcy Appellate Panel. *See* ECF Nos.
16 484–85. Philips and Key elected to have the appeals heard by the U.S. District
17 Court for the Eastern District of Washington (the “District Court”). *See* ECF No.
18 498; ECF No. 509. The District also moved for stays of the relief from stay orders
19 during the pendency of the appeals in both this Court and the District Court. *See*
20 ECF No. 491; ECF No. 493; Emergency Motion for Stay of Philips Order Pending
21 Appeal, *Kennewick Pub. Hosp. Dist. v. Philips Med. Capital, LLC*, Case No. 4:17-
22 cv-05195-SAB (E.D. Wash. Nov. 29, 2017), ECF No. 3; Emergency Motion for

1 Stay of Key Order Pending Appeal, *Kennewick Pub. Hosp. Dist. v. Key Gov't Fin.,*
2 *Inc.*, Case No. 4:17-cv-05197-SAB (E.D. Wash. Nov. 29, 2017), ECF No. 4.

3 This Court granted stays of the relief from stay orders until January 11,
4 2018. *See* ECF No. 587; ECF No. 589. After the stays pending appeal expired, the
5 District moved for extensions thereof; the Court denied the District's request. *See*
6 ECF No. 659; ECF No. 682. On February 22, 2018, the District Court granted
7 stays of the Philips and Key relief from stay orders for the pendency of the appeals.
8 *See* ECF No. 755; ECF No. 756. The appeals have been fully briefed; the District
9 Court has not yet announced a decision on either appeal.

10 **C. Negotiations with Group One Equipment Lessors.**

11 The District has been negotiating with the Group One Equipment Lessors
12 since December 2017. On or about December 8, 2017, the District's buyer, RCCH
13 HealthCare Partners ("RCCH"), notified the District's counsel that RCCH was
14 prepared, through and in conjunction with the District, to offer and negotiate terms
15 for the purchase of all of the District's leased equipment from all equipment lessors
16 in connection with a sale of substantially all of the District's assets to RCCH under
17 a plan of adjustment. *See* ECF No. 660 ¶ 6. Since then, the District has been
18 engaged in active negotiations with the Group One Equipment Lessors regarding
19 their treatment under a plan of adjustment and what, if any, payments they will
20 receive prior to the closing of the sale to RCCH. During this time, the District has
21 also filed its Plan for the Adjustment of Debts Dated April 16, 2018 [ECF No. 794]
22 (as amended, the "Plan").

1 The Agreement is the result of the Parties' negotiations. The District
2 received a copy of the Agreement signed by all parties on May 4, 2018.

3 **D. Settlement and Plan Support Agreement.**

4 To avoid the risk and expense of further litigation relating to the lease
5 agreements, the Parties entered into the Agreement to settle their disputes.
6 Agreement ¶ H. The terms the Parties agreed for resolving their disputes are
7 summarized below.²

8 First, the Agreement provides that monthly payments of \$150,000 per month
9 (the "Interim Payments") will accrue for the benefit of the Group One Equipment
10 Lessors effective as of March 1, 2018. Agreement § I(a). The Agreement details
11 when such payments will be due and how they will be allocated between the Group
12 One Equipment Lessors. *See id.* § I(a)–(b). The Interim Payments will continue
13 until the earlier of (a) the date(s) the Group One Equipment Lessors repossess their
14 respective equipment or (b) closing. *See id.* § I(a). So long as the District timely
15 makes the Interim Payments and the Agreement has not terminated, the Group One
16 Equipment Lessors will forbear from exercising any remedies against the District.
17 *Id.* § VI.

18 The Agreement also provides that, upon entry of an order approving the
19 Agreement pursuant to Bankruptcy Rule 9019, the Group One Equipment Lessors

20 ² This Motion summarizes the Agreement for the convenience of parties in
21 interest. To the extent there is any inconsistency between this Motion and the
22 Agreement, the terms of the Agreement control.

1 shall be deemed to hold allowed administrative priority claims (the
2 “Administrative Claims”). *Id.* § I(c). The amount of those Administrative Claims
3 will be the total amount of the rent and other payments reserved and unpaid under
4 their lease agreements, *less* the amount of Interim Payments paid to the Group One
5 Equipment Lessors, from the Petition Date through the earlier of (a) the date(s)
6 they repossess their respective equipment or (b) closing. *See id.*

7 The Agreement also describes in detail how the Group One Equipment
8 Lessors will be treated under the Plan (as amended for consistency with the
9 Agreement), including but not limited to (a) rejection of the Group One Equipment
10 Lessors’ lease agreements and satisfaction of their rejection damages claims;
11 (b) buyout of the Group One Equipment Lessors’ equipment for \$13.5 million in
12 cash, plus any applicable Washington state sales taxes; (c) release of the Group
13 One Equipment Lessors’ ownership interests in the equipment; and (d) payment of
14 all Administrative Claims and any other allowed administrative claims under
15 Section 943(b)(5) of the Bankruptcy Code. *See id.* §§ IV–V. The Group One
16 Equipment Lessors will support and waive their rights to object to the Plan so long
17 as the Plan includes the provisions in Section V of the Agreement (which pertain to
18 the Group One Equipment Lessors’ treatment under the Plan). *Id.* § X.

19 Finally, the Agreement addresses the Parties’ respective obligations in
20 resolving the pending litigation. Once the Agreement is signed, the District,
21 Philips, and Key will jointly request that proceedings in the District’s appeals of
22 this Court’s relief from stay orders, currently pending before the District Court, be

1 stayed pending negotiation and approval of the Agreement. *Id.* § XXII. Once this
2 Court has entered an order approving the Agreement pursuant to Bankruptcy Rule
3 9019, (a) the Court's Philips and Key relief from stay orders will be amended or
4 supplemented by stipulated order to be consistent with the Agreement; (b) the
5 District, Philips, and Key will execute and file with the District Court stipulations
6 and orders for dismissal of the District's appeals of the relief from stay orders
7 entered in favor of Philips and Key; and (c) Philips and the District will execute
8 and file with the Court a stipulation and order for dismissal of the Philips
9 Adversary Proceeding. *Id.* § III.

10 **IV. BASIS FOR RELIEF REQUESTED**

11 **A. Legal Standard Governing the Relief Requested.**

12 The District seeks approval of the Agreement pursuant to section 105(a) of
13 the Bankruptcy Code and Bankruptcy Rule 9019. While the District does not
14 believe it is required by the Bankruptcy Code to seek approval of its agreements
15 under Bankruptcy Rule 9019, the terms of the Agreement require the District to
16 request approval of the Agreement pursuant to Bankruptcy Rule 9019 and the
17 District it believes that good reason exists under the circumstances to request such
18 approval. Thus, the District seeks such approval solely with respect to the
19 Agreement.

20 Settlements are "a normal part of the process of reorganization." *Protective*
21 *Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S.
22 414, 424 (1968) (quoting *Case v. L.A. Lumber Prods. Co.*, 308 U.S. 106, 130

1 (1939)). Bankruptcy Rule 9019, which applies to this proceeding pursuant to
2 Bankruptcy Rule 1001, provides the procedural mechanism for approval of such
3 settlements. It states, in relevant part, that “[o]n motion by the trustee and after
4 notice and a hearing, the court may approve a compromise or settlement.” Fed. R.
5 Bankr. P. 9019(a).

6 A chapter 9 debtor is entitled—but not required—to seek approval of a
7 settlement pursuant to this mechanism. *See In re City of Stockton*, 486 B.R. 194,
8 200 (Bankr. E.D. Cal. 2013) (finding that city, while not obligated to seek approval
9 pursuant to Bankruptcy Rule 9019, could choose to consent to judicial approval
10 pursuant to that rule). While requiring a chapter 9 debtor to seek the Court’s
11 approval of a settlement would impermissibly violate the terms of section 904 of
12 the Bankruptcy Code by interfering with the municipality’s property and revenues
13 without its consent, a municipality may consent to judicial involvement. *See* 11
14 U.S.C. § 904 (“Notwithstanding any power of the court, ***unless the debtor***
15 ***consents*** . . . the court may not . . . interfere with . . . any of the property or
16 revenues of the debtor . . .”) (emphasis added).

17 The decision to approve a settlement is subject to the sound discretion of the
18 court. *See Woodson v. Fireman’s Fund Ins. Co. (In re Woodson)*, 839 F.2d 610, 620
19 (9th Cir. 1988); *Martin v. Kane (In re A & C Props.)*, 784 F.2d 1377, 1381 (9th Cir.
20 1986); *United States v. Alaska Nat’l Bank of the N. (In re Walsh Constr., Inc.)*, 669
21 F.2d 1325, 1328 (9th Cir. 1982). Generally, courts review several factors in
22 considering whether to approve a proposed settlement: “(a) [t]he probability of

1 success in litigation; (b) the difficulties, if any, to be encountered in the matter of
2 collection; (c) the complexity of the litigation involved, and the expense,
3 inconvenience and delay necessarily attending it; [and] (d) the paramount interests
4 of the creditors and a proper deference to their reasonable views in the premises.”
5 *In re A & C Props.*, 784 F.2d at 1381 (quoting *In re Flight Transp. Corp. Sec.*
6 *Litig.*, 730 F.2d 1128, 1135 (8th Cir. 1984)).

7 The Court need not conduct an exhaustive investigation into the validity or a
8 mini-trial on the merits of the claims sought to be settled. *In re Walsh Constr., Inc.*,
9 669 F.2d at 1328. In fact, the Court need not decide the questions of law and facts
10 raised in the controversies sought to be settled, and need not determine whether the
11 settlement presented is the best one that could possibly have been achieved.
12 Instead, the Court’s responsibility is only to “canvass the issues to see whether the
13 settlement ‘fall[s] below ***the lowest point in the range of reasonableness.***’” *Cosoff*
14 *v. Rodman (In re W.T. Grant Co.)*, 699 F.2d 599, 608 (2d Cir. 1983) (emphasis
15 added) (quoting *Newman v. Stein*, 464 F.2d 689, 693 (2d Cir. 1972)).

16 Finally, section 105(a) of the Bankruptcy Code provides the Bankruptcy
17 Court with broad authority to issue any order necessary to carry out the provisions
18 of the Bankruptcy Code, including the issuance of injunctions. *See* 11 U.S.C.
19 § 105(a) (“The court may issue any order, process, or judgment that is necessary or
20 appropriate to carry out the provisions of this title.”).

1 **B. Relief Requested Should Be Granted.**

2 The District respectfully submits that the Agreement should be approved
3 under Bankruptcy Rule 9019 because it is in the best interests of the District and its
4 rehabilitative efforts. The Agreement allows the District to continue using the
5 equipment leased from the Group One Equipment Lessors during the pendency of
6 plan confirmation and closing of the sale to RCCH, providing the District with
7 greater certainty regarding its ability to continue offering medical services for the
8 Tri-Cities region. The Agreement does so at a price that fairly reflects the
9 probability of success and attendant costs, delay, and expense in continued
10 litigation with the Group One Equipment Lessors.

11 Moreover, the Agreement increases the likelihood the District will be able to
12 successfully confirm the Plan. The District has agreed it will not propose or
13 support a plan of adjustment inconsistent with the Agreement. The Group One
14 Equipment Lessors have agreed to support and vote in favor of a plan of
15 adjustment that is consistent with the Agreement. The Group One Equipment
16 Lessors' support will facilitate the District's ability to successfully confirm the
17 Plan.

18 The District respectfully submits that the Agreement is fair and equitable
19 under the circumstances.
20
21
22

1 **1. Probability of Success on the Merits.**

2 In light of the extensive motions practice mentioned above and related
3 filings, the Court is already familiar with the legal issues being settled through the
4 proposed Agreement.

5 This Court has already found in favor of Philips and Key and against the
6 District on the issue of whether Philips and Key, as equipment lessors, have
7 interests in the leased equipment entitled to adequate protection and relief from the
8 automatic stay for lack of such protection. *See* ECF No. 468; 477. In contrast, in its
9 orders staying the Philips and Key relief from stay orders pending appeal, the
10 District Court indicated the District's claims have a strong likelihood of success on
11 the merits. *See* Order Granting Emergency Motion for Stay of Philips Order
12 Pending Appeal at 2, *Kennewick Pub. Hosp. Dist. v. Philips Med. Capital, LLC*,
13 Case No. 4:17-cv-05195-SAB (E.D. Wash. Feb. 22, 2018), ECF No. 20 ("The
14 District has shown it has a strong likelihood of success on the merits of its
15 claim."); Order Granting Emergency Motion for Stay of Key Order Pending
16 Appeal at 2, *Kennewick Pub. Hosp. Dist. v. Key Gov't Fin., Inc.*, Case No. 4:17-cv-
17 05197-SAB (E.D. Wash. Feb. 22, 2018), ECF No. 21 (same).

18 While the District is confident that it is reasonably likely to succeed on its
19 claims that Philips and Key, as equipment lessors in a chapter 9 case, are not
20 entitled to adequate protection payments, the issue is a complicated one of first
21 impression and litigation is inherently costly and uncertain. The litigation and
22 further appellate process could take years and cost hundreds of thousands of

1 dollars. Nor is the matter free from doubt. Under the circumstances, the District
2 does not believe that the risks associated with litigation justify the potential
3 rewards.

4 The adverse effects that protracted litigation and the accompanying
5 uncertainty could have on the District's other rehabilitative efforts are substantial.
6 Until final resolution of the Group One Equipment Lessors' claims, the additional
7 significant obligations asserted by the Group One Equipment Lessors would place
8 a cloud over the District's rehabilitative efforts that would make it more difficult
9 for the District to reach consensus with its other creditors. A risk also exists that the
10 District could lose its stays pending appeal if the cases are appealed to the Ninth
11 Circuit Court of Appeals, jeopardizing the District's ability to continue operations.
12 Worse yet, the District might lose such litigation altogether. These risks are not
13 acceptable to the District. The Interim Payment and buyout provisions in the
14 Agreement appropriately obviate the risk of the Group One Equipment Lessors'
15 claims hanging over the District's rehabilitative efforts for an extended period of
16 time.

17 Thus, while the District believes, particularly in light of the District Court's
18 remarks on the District's likelihood of success on the merits, that it has strong
19 claims in litigation, the economics of the Agreement fully reflect those strengths as
20 well as the potential risks to the District, including the risks to the District's overall
21 rehabilitative efforts. Thus, the probability of success prong favors approval of the
22 settlement reached.

1 **2. Difficult, if Any, in Collection.**

2 The District does not believe that the difficulty of collection prong is an
3 important factor under the circumstances, as the District is not seeking money
4 damages from the Group One Equipment Lessors.

5 **3. Complexity, Expense, and Inconvenience of Litigation.**

6 The complexity, expense, inconvenience, and delay of litigation weigh in
7 favor of settlement. The litigation presents an issue of first impression: whether an
8 equipment lessor in a chapter 9 bankruptcy proceeding has a statutorily-created or
9 constitutionally-recognized interest in the leased equipment that entitles that lessor
10 to adequate protection payments. Because the litigation concerns an issue of first
11 impression, it is likely that the non-prevailing party in each appeal before the
12 District Court will appeal the District Court's decision.

13 The District respectfully submits that the likelihood of a protracted appellate
14 process, with the attendant substantial fees and expenses, weighs heavily in favor
15 of settlement, particularly given the size of the Group One Equipment Lessors'
16 claims³ and the District's desire and need to effect the Plan in the immediate future.

17 **4. The Paramount Interests of Creditors.**

18 The District would not be seeking approval of the Agreement if it did not
19 believe it was in the best interests of the District, its creditors, and the public. The
20 District will benefit greatly from certainty with respect to its continued use of the

21 ³ Collectively, the Group One Equipment Lessors' filed proofs of claim assert
22 claims amount to approximately \$27.2 million. *See* ECF No. 660 ¶ 5.

1 equipment for during the pendency of plan confirmation and closing of the sale to
2 RCCH. The uncertainty associated with protracted litigation involving the Group
3 One Equipment Lessors and the possible repossession of the equipment could
4 inhibit the District's ability to move forward with its other rehabilitative efforts.
5 Protracted litigation would impair the District's ability to reach resolutions with its
6 other creditors. The Agreement removes substantial uncertainty regarding the
7 District's payment obligations to the Group One Equipment Lessors and the
8 District's continued use of the equipment that clouds the District's rehabilitative
9 efforts. The Agreement simultaneously provides the District with a significant
10 impaired accepting class for purposes of the Plan. The District believes that these
11 benefits will facilitate the District's ability to reach consensual resolution with
12 other creditors and constituents. The Agreement is a favorable settlement, and it is
13 time for the District and its leadership to move forward from the litigation with
14 Group One Equipment Lessors.

15 In the absence of a settlement, protracted and costly litigation, including
16 appellate litigation, would likely continue. This, of course, would have a negative
17 impact on the District's rehabilitative efforts and would be a distraction to the
18 District's leadership. For example, and as noted above, during the course of
19 protracted litigation, a risk exists the District will lose its stays pending appeal if
20 the cases are appealed to the Ninth Circuit Court of Appeals, potentially forcing the
21 District to choose between making monthly payments greater than those required
22 under the Agreement or facing repossession of the equipment, significantly

1 harming continued operations. Further, if the District were to lose the litigation, the
2 results would be dire. The District, therefore, submits that the Agreement is in the
3 best interests of the District, its creditors, and the public.

4 **V. NOTICE**

5 The District will serve this Motion upon the Special Service List, as defined
6 in the Revised Case Management Procedures [ECF No. 576]. The District submits
7 that, in light of the nature of the relief requested, no other or further notice is
8 necessary.

9 **VI. CONCLUSION**

10 WHEREFORE, for the reasons set forth above, the District respectfully
11 requests that the Court (a) enter an order, substantially in the form of the Proposed
12 Order attached hereto as Exhibit A, granting the relief requested by this Motion
13 and (b) grant such other and further relief as the Court may deem just and proper.

14
15 DATED this 7th day of May, 2018.

16 FOSTER PEPPER PLLC

17
18 By: /s/ Jack Cullen

19 Jack Cullen, WSBA #7330

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